

Vienna LL.M. News

LL.M.

INTERNATIONAL
TAX LAW
VIENNA

Tax Lunch Talks – a series to be continued

A series of Tax Lunch Talks were held in the previous months bringing together LL.M. students and researchers of the Institute for Austrian and International Tax Law. Among others, they covered recent tax developments in Norway and Uganda.

A PECULIAR CASE ON VAT, EU STATE AID RULES, AND NORWEGIAN SWIMMING POOLS



As an EFTA and EEA member, Norway faces restrictions like the prohibition on state aid in Article 107 TFEU that is mirrored in Article 61 of the EEA Agreement. This has caused issues with Norwegian VAT rules. Several municipal services in Norway fall outside the VAT Act, therefore, municipalities cannot credit input VAT.

Norway enacted the VAT Compensation Act in order to reduce distortion and allow refunds for paid VAT. However, in 2007, a municipal school providing VAT-exempt courses to the offshore sector faced a dilemma when it received VAT refunds while competing private schools did not. Private schools complained to the EFTA Surveillance Authority (ESA) which found that the Norwegian VAT Compensation Act violated Article 61. Norway addressed this by adding Article 4(2)(4) based on Article 61 disallowing compensation for entities conducting economic

activity competing with non-compensable undertakings. Following this, issues emerged when municipalities constructed public swimming pools and charged user fees without VAT. These municipalities sought VAT refunds for construction and operational costs. The Norwegian Tax Administration (NTA) denied the claims, deeming the service as economic activity potentially competing with non-compensable undertakings. Alstahaug municipality challenged the NTA's decision in court. The court ruled in favour of the NTA, stating that profitability is not necessary for a service to be considered "economic activity", and theoretical competition is sufficient. The decision was appealed.

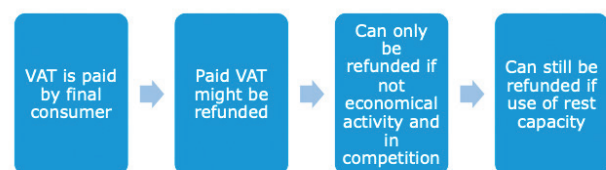
The ruling aligns with the law's wording, but it is worth questioning if Norwegian legislation is stricter than EU/EEA law. State aid is only prohibited if it affects trade between contracting parties. Is Norway's exception narrower than the EEA agreement? If not, how does it impact trade among the EEA States? The ESA decision of 5 December 2012 suggests otherwise as a public swimming pool was deemed to not affect trade due to geographical distance.

Gaute Risholt, Norway, Full-time 2022/23

The views of the Court



- Economic activity
 - The line between economic and non-economic activity is challenging to draw. It can be non-economic even if some user-payment.
 - Purpose (of social character) and financing (payment covers only a fraction of costs) point towards non-economic activity, cf. preparatory work
 - Relevant how much time (proportionally) is spent on non-law-required activities, cf. C-364/92 SAT *Fluggesellschaft mbH v Eurocontrol* para. 19 (the "nature" of the activity)
 - Even loss-making entities can be economic activities, cf. EU Commission Statement No N 464/2009 para. 13. Therefore, how profits are calculated is irrelevant, but isolated is the fact that the services are loss-making points towards non-economic activity.
 - The fact that the pool is open to the public abt. 70 % of the operating time indicates economic activity. The same goes for the prices that are in line with market prices.
 - Conclusion: Economic activity



VAT ON ELECTRONIC TRANSACTIONS IN UGANDA



The tax authority in Uganda has shifted attention to the taxation of electronic commerce transactions. The Uganda Revenue Authority (URA) issued a public notice on 27 January 2022 notifying all non-resident suppliers of electronic services to collect, file and pay Value Added Tax (VAT) on e-commerce and digital services.

Non-resident suppliers of electronic services previously encountered several challenges. For instance, they were required to undergo a cumbersome process to register for VAT and obtain tax identification numbers. This subsequently necessitated the registration of a branch or a subsidiary in Uganda. To address these challenges, a simplified registration procedure and return filing template were developed by the URA. Additionally, the frequency of filing returns by non-resident suppliers of electronic services was reduced

from monthly to quarterly filing. The URA has also carried out engagement in and sensitization of the non-resident suppliers and their tax agents in order to appreciate their specific challenges.

The URA has introduced an Application Programming Interface (API) to enable non-resident suppliers to connect to the URA system and easily identify customers who are not registered for VAT.

It is still unclear how foreign suppliers who are merely acting as an intermediary, for example, by providing a digital platform or marketplace over which other non-residents supply services to Ugandan customers, will be affected. Enforcement against non-resident suppliers with no presence in the country still remains a challenge.

An adaptable tax regime is required to deal with challenges arising from the digitalized economy. E-commerce is constantly evolving and, therefore, a dynamic approach is recommended to effectively deal with challenges as they arise.

Anthony Mark Omona, Uganda,
Full-time 2022/23

Taxation of E-Commerce			
1999-2011	2011-2016	2018 to 2022	Since 2022
<ul style="list-style-type: none"> Satellite TV providers are able to provide services without a physical presence. Law amended so that VAT was applied where the person receives a signal or service. 	<ul style="list-style-type: none"> Scope expanded to include other electronic services via telecom link. Appointment of e-commerce tax representatives. Mechanism for the identification of non-registered customers was also not clear. 	<ul style="list-style-type: none"> Scope expanded to include <ul style="list-style-type: none"> Streaming services. Online advertising. Cloud storage services. Subscription-based media. Broadcasts and events. Electronic data management. 	<ul style="list-style-type: none"> Simplified registration procedure and returns filing template. Quarterly of filing returns. APIs to enable suppliers to connect to URA database. Suppliers able to distinguish B2B from B2C transactions.

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Addressing the Challenges

- Non-resident suppliers are required to register and account for VAT on supplies to non-taxable persons.
- Supplier required to identify non-taxable persons whose transactions should be subject to VAT.
- Supplier to issue simplified tax invoices to customers.
- Non-resident should distinguish B2B from B2C transactions.
- Electronic services to taxable persons are out of scope.

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In Class

SOCCER MEMORIES



Building a sense of community

The LL.M. and PhD students met for a friendly soccer match on a beautiful Sunday in April. The ambiance was filled with color, excitement, and laughter as the students warmed up

for the game. The match began with great enthusiasm from both teams with each player showcasing their skills and abilities on the field. The LL.M. team took the lead and scored the first goal within the first few minutes. However, the PhD team equalized the score soon after. The players displayed remarkable teamwork and coordination, passing the ball with precision and speed. The mostly female crowd cheered and applauded every successful goal, creating a warm and friendly atmosphere on the field. The game ended with the LL.M. team winning the match. The players exchanged high-fives and handshakes. However, it was not about winning or losing. It was about bringing people together, building new friendships, and creating collective memories. It was truly a wonderful experience, filled with merriment, joy, and a sense of community. It was an opportunity to create new collaborations and memories that will last a lifetime.

Fatimah Sa'id Ahmed, Nigeria, Full-time 2022/23

... and the fun continues at the "Heuriger" (Viennese wine tavern):



Students meet HR professionals

JOB FAIR

In March, Professor Lang hosted the traditional job fair for our current LL.M. students. The full-time 2022/23 students will finish the program in June 2023 and were afforded the opportunity to meet representatives of several companies to discuss career options. The companies on site were Henkel, LeitnerLeitner, TPA, and PwC.

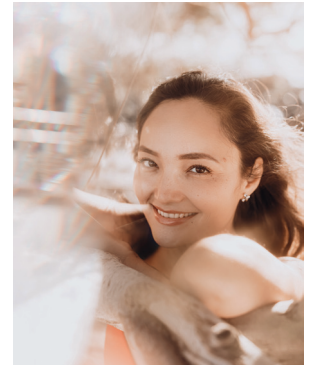
Alumni

MEMORIES FULL OF LEARNING AND JOY

The Vienna LL.M. programme under the leadership of Professor Michael Lang, and his team proved to be a stepping-stone to an international tax career in private and public sectors. As a graduate of the KIMEP University in Almaty with a major specialization in business administration/accounting and a minor in taxation, I started my career at EY Kazakhstan as a tax associate in 2012. My interest in international tax law began during my studies at the KIMEP University where I actively participated in research projects and activities of the Central Asian Tax Research Center under the leadership of Professor Tomas Balco (Graduate Full-time 2002/03). After participation in EY's international contest, "Young Tax Professional of the Year" held in Boston in 2012, as a national finalist from Kazakhstan, I decided to pursue a master's degree in international tax law. My preference of the LL.M. programme at the WU University was obvious because of its well-renowned reputation for excellence.

During my studies in Vienna, I developed a wide professional network in international taxation. This enabled me to find a great job opportunity in the private sector in Europe prior to graduation from the programme. Thus, in 2014, I joined PwC's Tax Reporting & Strategy team in Amsterdam, the Netherlands. My main focus was on tax strategy, the tax control framework, cooperative compliance models, and digitalization.

During my career at PwC, I also had a unique chance to co-lecture at the Erasmus University in Rotterdam, the University of Lausanne in Switzerland, and the WU University in Vienna on tax governance and tax risk management. I co-authored a series of articles on good tax governance and contributed to PwC through leadership on tax digitalization. Subsequently, in 2021, I joined the Global Forum on Transparency and Exchange of Information for Tax Purposes at the OECD. Currently, I am contributing to the work in the field of automatic exchange of tax information among 164 member countries of the Global Forum by conducting complex and politically-sensitive reviews and providing a high-quality service to support developing countries in implementing the international tax standards. My memories of the Vienna LL.M. programme are full of learning, joy in the city of music, and developing long-lasting friendships.



Kuralay Baisalbayeva, Kazakhstan
Graduate Full-time 2013/14

EXCELLENT AND SIMPLY AMAZING



While working at the Kenya Revenue Authority's large taxpayer office, I was involved in two tax audits that sparked my interest in international taxation. They involved an agribusiness multinational and a leading multinational financial institution. While attempting to

understand the complexity of the holding structures of these multinationals and their related party transactions, I realized that I needed to equip myself with specialized knowledge in order to effectively handle such structures and transactions in future tax audits. It was then that I came across the LLM prospectus and realized that the Vienna LLM program was ideal for providing me with the necessary knowledge and skills required to navigate the world of international taxation. I found the program to be excellent and the experience of living in Vienna for about a year, from interacting with participants from all over the world and learning about the city's rich history to enjoying the city's wonderful architecture was simply amazing. After completing the LLM program, I joined

Siemens AG's tax department and later WTS steuerberatung GmbH where I applied the knowledge that I acquired from the program in my day-to-day tax advisory work. Specifically, I worked on the taxation of large infrastructure construction projects, taxation of permanent establishments, and the application of double tax treaties and transfer pricing. Currently, I am the tax lead for the Africa region at the IFC-World Bank group where I focus on conducting tax due diligence on IFC's investments. This is a role that gives me a lot of joy and satisfaction as I get to realize my passion for development and international tax in one role. This course not only gave me a strong foundation in international taxation and a network of tax professionals from which I can tap useful tax insights, but the multicultural set up of my cohort prepared me to work in teams with diverse cultural backgrounds. The factors continue to play a big role in my career trajectory to date. The decision to pursue the Vienna LLM program is one that I am immensely proud of, and I remain very grateful to the LLM faculty for continuing to support this program.

Andrew Ogutu, Kenya
Graduate Full-time 2007/08